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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 JEFFREY JACKSON-EL, on } Case No. CV 11-4623-JST (OP)  
13 behalf of ALONZO JACKSON, }  
14 Petitioner, } ORDER RE: VOLUNTARY  
15 v. } DISMISSAL OF PETITION FOR WRIT  
16 } OF HABEAS CORPUS PURSUANT TO  
17 Respondent. } FED. R. CIV. P. 41(a)(1)

18 I.

19 PROCEEDINGS

20 On April 4, 2011, Jeffrey Jackson-El filed a Petition for Writ of Habeas  
21 Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition") on  
22 behalf of his brother, Alonzo Jackson. (ECF No. 1.) The Petition challenges  
23 Alonzo Jackson's 2003 conviction in the Los Angeles County Superior Court for  
24 attempted murder. Mr. Jackson was sentenced to a total state prison term of  
25 seventy-five years. (Id. at 1, 4.)

26 On June 23, 2011, the Court dismissed the Petition with leave to amend for  
27 the following reasons: (1) Mr. Jackson-El had not established any of the  
28 requirements or provided any purported explanation to justify seeking "next

1 friend" standing on behalf of his brother; (2) failure to name the proper  
2 respondent; and (3) failure to comply with Rule 8 of the Federal Rules of Civil  
3 Procedure. (ECF No. 4.) Mr. Jackson-El was given until July 23, 2011, to  
4 respond to the dismissal order. (*Id.* at 6.) To date, Mr. Jackson-El has not  
5 responded to the dismissal order.

6 On July 28, 2011, the Court received a letter from Alonzo Jackson. (ECF  
7 No. 5.) In his letter, he states that he never gave his brother authority to file a  
8 habeas petition on his behalf and appreciates his brother's efforts. However, he  
9 plans to file a habeas petition on his own behalf at a later date and does not wish to  
10 suffer any prejudice as a result of his brother's efforts. (*Id.*) The Court construes  
11 Alonzo Jackson's request as a Motion for Voluntary Dismissal pursuant Rule 41  
12 of the Federal Rules of Civil Procedure.

13 **II.**

14 **DISCUSSION**

15 Rule 41 of the Federal Rules of Civil Procedure allows for the voluntary  
16 dismissal of an action by a plaintiff without prejudice and without a court order  
17 before the opposing party serves either an answer or a motion for summary  
18 judgment. Fed. R. Civ. P. 41(a)(1); Hamilton v. Shearson-Lehman American  
19 Express, Inc., 813 F.2d 1532, 1534 (9th Cir. 1987). Even if the defendant has  
20 filed a motion to dismiss, a plaintiff may terminate his action voluntarily by filing  
21 a notice of dismissal under Rule 41(a)(1). See Miller v. Reddin, 422 F.2d 1264,  
22 1265-66 (9th Cir. 1970). The dismissal is effective on filing and no court order is  
23 required. *Id.* at 1266. A plaintiff may dismiss either some or all of the  
24 defendants-or some or all of his claims-through a Rule 41(a)(1) notice. Pedrina v.  
25 Chun, 987 F.2d 608, 609 (9th Cir. 1993). Filing a notice of voluntary dismissal  
26 with the court automatically terminates the action as to the defendants who are the  
27 subjects of the notice. Unless otherwise stated, the dismissal is ordinarily without  
28 prejudice to the plaintiff's right to commence another action for the same cause

1 against the same defendants. McKenzie v. Davenport-Harris Funeral Home, 834  
2 F.2d 930, 934-35 (9th Cir. 1987).

3 As set forth above, on July 28, 2011, the Court received a letter from  
4 Alonzo Jackson indicating that he never gave his brother authority to file a habeas  
5 petition on his behalf, plans to file a habeas petition on his own behalf at a later  
6 date, and does not wish to suffer any prejudice as a result of his brother's efforts.  
7 (ECF No. 5.) Since the Court did not order a response to the Petition, Respondent  
8 has not filed an answer or a motion for summary judgment. Thus, the Court finds  
9 that dismissal of the Petition without prejudice is warranted.

III.

## **ORDER**

IT IS THEREFORE ORDERED that the Petition is hereby dismissed without prejudice. Fed. R. Civ. P. 41(a)(1).        /

DATED: 11/19/11

HON. JOSEPHINE STATION TUCKER  
United States District Judge

Presented by:

**HONORABLE OSWALD PARADA**  
United States Magistrate Judge